

L5CsCLAs

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

20 CR 76 (NRB)

5 ZACHARY CLARK,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 12, 2021

12:00 p.m.

10 Before:

11 HON. NAOMI REICE BUCHWALD,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

United States Attorney for the
Southern District of New York

16 BY: MATTHEW HELLMAN

17 Assistant United States Attorney

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 BY: JONATHAN A. MARVINNY

20 ALSO PRESENT:

21 COURTNEY BONGIOLATTI, FBI Special Agent

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(Case called)

THE DEPUTY CLERK: Is the government present and ready to proceed?

MR. HELLMAN: Yes. Good afternoon, your Honor. Matthew Hellman for the government. I'm joined at counsel table by Special Agent Courtney Bongiolatti of the Federal Bureau of Investigation.

THE DEPUTY CLERK: Is the defendant present and ready?

MR. MARVINNY: Yes. Good afternoon, your Honor. Federal Defenders of New York by Jonathan Marvinny for Zachary Clark.

THE COURT: You may be seated.

All right. Let me begin, as I customarily do, by ensuring that I've received all of the submissions in connection with the sentence. In sequence, hopefully, first is the report of the probation department, which has a revised report date of October 30. Then there is Mr. Marvinny's submission, sentencing memorandum, filed on April 28. Then there is the government's sentencing memorandum. It is dated May 5. And finally, a letter from Mr. Marvinny in response dated May 6.

Are there any other documents I should have received in connection with the sentence?

MR. HELLMAN: Not from the government.

MR. MARVINNY: Not from the defense.

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1 THE COURT: All right. Can I confirm that both
2 parties have received a copy of the presentence report?

3 MR. HELLMAN: Yes.

4 MR. MARVINNY: Yes, your Honor.

5 THE COURT: Mr. Marvinny, I believe you stated that
6 you have no objections to the presentence report other than a
7 recommended sentence, is that correct?

8 MR. MARVINNY: That's right.

9 THE COURT: Did you have a chance to review it with
10 Mr. Clark?

11 MR. MARVINNY: Yes, I did.

12 THE COURT: OK. Thank you.

13 Does the government have any objections to the
14 presentence report?

15 MR. HELLMAN: Just a correction, I think.

16 THE COURT: OK.

17 MR. HELLMAN: I think the parties are aligned on this.
18 At paragraph 107 --

19 THE COURT: Hold on. Give me a second.

20 MR. HELLMAN: Page 21, for your Honor's reference.

21 THE COURT: OK.

22 MR. HELLMAN: Paragraph 107 indicates that the
23 criminal history category is VI, which is also the category the
24 parties agree applies. Turning forward to page 26, at
25 paragraph 143 the report indicates that the criminal history

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1 category is IV.

2 Finally, turning to the close of the report, at page
3 30, which is the sentencing recommendation of probation, it is
4 indicated that the criminal history category is IV.

5 The parties agree that the criminal history category
6 that applies is VI, and apparently so does probation. I think
7 this is a ministerial error, but it does affect not what the
8 functional guidelines range is, but what the guidelines range
9 would be, absent the statutory maximum that applies.

10 THE COURT: Right. But given the statutory maximum,
11 the category VI has no impact?

12 MR. HELLMAN: That's correct, but the guidelines do
13 change. The guidelines, absent the statutory maximum, are
14 360 to life. If the criminal history category the parties
15 agree applies is applied, I just wanted to make sure that the
16 PSR accurately reflects the parties and probation's
17 understanding. Of course, the court will determine --

18 THE COURT: We will correct that, but I think the most
19 significant point, I mean, apart from the fact, of course, in
20 order to be accurate, is that this is not one of the
21 double-counting situations where the same factor affects both
22 the criminal history and the offense category, because given
23 the particular criminal history of Mr. Clark, there was no
24 bottom-line impact.

25 MR. HELLMAN: Well, yes, that's correct. I think the

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1 government shares that view.

2 THE COURT: All right. I think that, in this
3 situation, it would probably be best to hear from the
4 government first with respect to the appropriate sentence.

5 MR. HELLMAN: Thank you, Judge.

6 I think the government endeavored in its submission to
7 be complete, and it was a longer-than-average submission, which
8 reflects the government's understanding of the seriousness of
9 this offense.

10 The government submits today, and of course in its
11 submission, that a guidelines sentence of 240 months, to be
12 followed by a period of lifetime supervised release, is
13 appropriate based on the nature and seriousness of the offense,
14 the defendant's criminal history, and both the principles of
15 specific and general deterrence.

16 I won't repeat all the arguments that are laid out in
17 support thereof in the government's submission, but I want to
18 make sure that something is clear. Mr. Marvinny makes a good
19 point in his reply submission that the way that a piece of the
20 government's sentencing submission is written conflates to
21 important events.

22 One is the defendant's post-arrest admissions to the
23 FBI and the other is, I'll refer to generally, is the
24 defendant's statements to the forensic evaluator, the defense
25 employed in this case. I think what the government was trying

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1 to indicate is that, in both scenarios, both immediately after
2 his arrest and until now apparently, and at least through the
3 period of time that the defendant was speaking with the doctor,
4 the defendant has critically minimized, which may be an
5 understatement, but critically minimized the seriousness of the
6 offense, his role in it, what his conduct meant to an
7 organization like ISIS, what it meant to him personally, and
8 established markers which the government submits are
9 inaccurate.

10 For example, the idea that the defendant stopped
11 posting months --

12 THE COURT: You know what --

13 MR. HELLMAN: -- prior to his arrest --

14 THE COURT: -- by asking you speak first, I just
15 envisioned another presentation. So maybe we should go back to
16 traditional format, to let Mr. Marvinny speak and then you can
17 respond to him.

18 I'm sorry for having made an assumption of the nature
19 of what the government wanted to say today. Why don't we let
20 Mr. Marvinny speak and you can respond to him.

21 MR. HELLMAN: Of course, your Honor.

22 THE COURT: OK.

23 MR. MARVINNY: Thank you, your Honor.

24 Your Honor, one thing missing from the entirety of the
25 government's submission was an acknowledgment that at the time

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1 of the offense, and in fact for years and years and years
2 leading up to the offense, Mr. Clark was in the midst of
3 terrible mental health issues and terrible struggles with
4 substance abuse.

5 That reality, that context for his behavior, cannot be
6 divorced from what he did. The government's submission doesn't
7 address at all the state that Mr. Clark was in.

8 Nothing I say here today, nothing I said in my
9 submission, was an attempt to minimize Mr. Clark's offense.
10 The offense is well-known. The government's initial complaint
11 in this case was 25 pages. It was detailed. The PSR is
12 exceptionally detailed, and all of the information reviewed by
13 Dr. Katsavdakakis, when he formulated his report, was
14 comprehensive and detailed. And I'll speak more about that in
15 a moment.

16 No one will minimize what Mr. Clark did. These are
17 the facts, your Honor. All of this remains true. Mr. Clark
18 did not attempt to travel abroad, so he did not travel abroad.
19 He didn't take any substantial steps towards planning an
20 attack. He didn't surveil locations. He didn't purchase any
21 weapons. He didn't purchase any materials to make weapons. He
22 didn't purchase any materials to make bombs.

23 When the government arrested Mr. Clark and searched
24 his home and searched his storage unit, they didn't find
25 weapons, they didn't find knives, they didn't find guns. They

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1 found homemade ISIS flags and books. At the end of the day,
2 the government is asking this court to impose a 20-year
3 sentence primarily because of something they think Mr. Clark
4 might have done. But his actual conduct doesn't merit a
5 sentence anywhere near what the government is asking, your
6 Honor.

7 What he did in the name was organize and administer
8 various ISIS-related channels on these encrypted applications.
9 In those channels, he posted various materials, the majority of
10 which he reposted from the public domain. He communicated with
11 multiple undercover officers and informants. And he's accepted
12 responsibility for his actions and the materials he posted and
13 the propaganda he posted in those chat rooms.

14 But Mr. Clark didn't commit an attack, your Honor, and
15 he didn't take steps towards committing an attack. And so the
16 government is asking the court to assume he was going to commit
17 an attack. But the best evidence we have is that he wasn't. I
18 say that again because there were no substantial steps. There
19 were no materials towards committing an attack.

20 So we had Mr. Clark evaluated by Dr. Katsavdakis, your
21 Honor. And the way we came to Dr. Katsavdakis was, very early
22 in this case, I had a meeting with the U.S. Attorney's office
23 where I asked them to consider Mr. Clark for some
24 deradicalization program or some kind of treatment program that
25 they feel would be appropriate for him. My position was if the

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1 defendant was deradicalized, he was not serious about ever
2 committing attacks, that he was not beyond redemption.

3 The government was not interested in placing Mr. Clark
4 in any deradicalization or any other kind of program, but said
5 were they to consider it, they would at least want to see an
6 evaluation. Who would you like to see an evaluation from? I
7 was told that Dr. Katsavdakakis was the go-to person for these
8 kinds of evaluations.

9 Dr. Katsavdakakis is an expert most frequently retained
10 by the U.S. Government. He most frequently works with the
11 Eastern District of New York. So we had Dr. Katsavdakakis
12 evaluate Mr. Clark. Your Honor, this is one point I want to
13 make absolutely clear. Dr. Katsavdakakis had a complete and
14 thorough understanding of Mr. Clark's offense. He didn't rely
15 on Mr. Clark's words alone when evaluating what Mr. Clark did
16 and the risks he might pose. He reviewed the government's
17 complaint. He reviewed all of the discovery that had been
18 provided to us at that point. He spent hours and hours and
19 hours and hours reviewing the case materials, including
20 Mr. Clark's post-arrest statement.

21 His account of Mr. Clark's offense, in his report at
22 pages two through five, his lengthy comprehensive -- and it
23 doesn't leave out any details -- all of the things the
24 government points to in its submission as aggravating factors
25 for Mr. Clark's conduct are represented and accounted for in

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1 Dr. Katsavdakakis' report. It's not as if he sat down with
2 Mr. Clark, Mr. Clark minimized his involvement, and
3 Dr. Katsavdakakis just took his word for it and said he's a low
4 risk of violence. That's not the case at all.

5 The court has the report. Dr. Katsavdakakis was well
6 aware of all of Mr. Clark's relevant conduct, and he still
7 reached the conclusion, your Honor, that Mr. Clark poses a low
8 risk of violence. That's consistent with the fact that
9 Mr. Clark didn't take any real world concrete steps towards
10 committing an act of violence.

11 Dr. Katsavdakakis focuses in his report on what I
12 started with, which is Mr. Clark's significant history of
13 mental illness, bipolar disorder, other ailments that started
14 when he was a teenager. He talks about Mr. Clark's extreme
15 history of substance abuse, a history of substance abuse that
16 I don't believe Dr. Katsavdakakis had ever encountered in his
17 career. Mr. Clark didn't just use drugs from time to time.
18 Mr. Clark was mainlining hard drugs for years and years. He
19 was injecting them into his body including as late as February
20 of 2019, at the time the offense conduct began in this case.

21 We turned in, in our submission, an excerpt from a
22 record, and Dr. Katsavdakakis' certainly reviewed all of
23 Mr. Clark's lengthy substance abuse records, talking about how
24 Mr. Clark was rushed to the hospital after an overdose in
25 February of 2019. He had swollen lesions on his arms from

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1 injecting heroin. He reported that he was using 20 bundles of
2 heroin and three grams of cocaine a day that he was injecting
3 into himself. That had been going on for years and years.

4 This was not the beginning of Mr. Clark's drug
5 addiction. This was the culmination of Mr. Clark's lengthy,
6 lengthy drug addiction. When I met Mr. Clark, your Honor, in
7 pretrial services on the day of his arrest, he was nodding off.
8 He couldn't communicate with me for more than a minute or two
9 at a time. He could barely speak. That was also true in his
10 post-arrest interview with the FBI, which Dr. Katsavdakakis
11 references.

12 Mr. Clark was in the depths of a debilitating drug
13 addiction throughout the offense conduct. That is not an
14 excuse. It is not an excuse, but it is critical context that
15 can't be ignored, and it speaks to why Dr. Katsavdakakis reached
16 the conclusion that Mr. Clark was not serious about committing
17 an attack.

18 So the most comprehensive evidence before the court is
19 that he was not serious, that he was not going to commit an
20 attack. Yet the government is asking you to sentence him
21 essentially as if he was. That's a large part of the
22 government's arguments.

23 Your Honor, we have talked about comparison cases in
24 our submission that justify a substantially below guidelines
25 sentence here. Most significantly, your Honor, is the

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1 Caesar case from the Eastern District of New York, where
2 Judge Weinstein imposed 48 months on a defendant. That
3 defendant was nearly identically situated to Mr. Clark. The
4 government in its submissions attempts to say that Mr. Clark's
5 conduct is much worse, but there is really no basis for saying
6 that.

7 The defendant in that case uploaded images and videos
8 supporting ISIS, encouraged people to travel to join ISIS. She
9 expressed support for acts of violence and attacks in
10 furtherance of ISIS's agenda. She herself communicated with
11 ISIS supporters who were interested in traveling to
12 ISIS-controlled territory, and attempted to have at least four
13 of them travel to ISIS, attempted to assist them. She also
14 suffered from mental health issues. And Dr. Katsavdakis wrote
15 her report in that case as well. He was an expert for the
16 government in that case, and he found she was a higher risk of
17 violence than he found was Mr. Clark.

18 Judge Weinstein imposed 48 months and he said, The
19 ideal sentence in a case like this would be a rehabilitation
20 program, some kind of deradicalization program. Unfortunately,
21 those programs are few and far between and they don't really
22 exist. Nevertheless, he gave her 48 months and placed her on a
23 lengthy term of supervision.

24 We are seeking something similar here for Mr. Clark.
25 The sentence is justified compared to the Caesar case and other

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1 cases Dr. Katsavdakakis talks about, and Dr. Tussy in her report
2 talks about this as well, how despite Dr. Katsavdakakis'
3 conclusion that Mr. Clark wasn't serious about committing an
4 attack, he is going to need substantial assistance, treatment,
5 and structure going forward.

6 So we're asking the court to place him on a lengthy
7 term of supervised release. While on a lengthy term of
8 supervised release, after his period of imprisonment, his
9 devices can be monitored, he can be forced to attend inpatient
10 or any other kind of treatment, he can be subject to the
11 probation office's watchful eye. We're not asking here for
12 time served, but we're asking for a reasonable period of
13 imprisonment followed by a lengthy period of supervised
14 release. I don't think a lifetime period of supervised release
15 is necessary, but a very lengthy period of supervised release
16 is necessary.

17 That's the appropriate sentence, from our perspective,
18 based on what Mr. Clark did and what he didn't do. You know,
19 he's tried during his time at the MCC, and now at the
20 Westchester County Jail, to avail himself of whatever
21 rehabilitation programs there are. He completed a drug
22 program. He is now in an anger management program. It's an
23 eight-week program. He began about a week ago. He is trying
24 his best to turn his life around, and he wrote a letter to this
25 court disavailing ISIS, disavailing radical etiology, and

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1 telling the court what he wants to do going forward.

2 Your Honor, I'm happy to answer questions, but, again,
3 our position is that a sentence anywhere near the length that
4 the government is requesting would be far greater than
5 necessary based on the facts of what Mr. Clark actually did and
6 what he didn't do.

7 THE COURT: Thank you.

8 I don't, at this point, have any questions. I've read
9 through your materials two times, beginning to end.

10 Mr. Hellman -- or maybe Mr. Clark first. I'm having a
11 little trouble with order today.

12 THE DEFENDANT: Good afternoon, your Honor.

13 Sitting here listening to all this stuff about myself
14 is not easy. You know, I have suffered a great deal growing up
15 with substance abuse and violence in my own home and stuff like
16 that. But I don't -- I don't want that to be confused with an
17 excuse or with -- yes, I may have did this, but this is why.

18 I'm fully aware of my actions. At no point would I
19 minimize my actions and the effects that they could have
20 possibly had on others as well. These are things that I have,
21 throughout my incarceration, I've had the time away from the
22 substances, I've had time to get stabilized on my medication,
23 I've had time in programs with therapists, to hash a lot of
24 this stuff out. And, you know, it really resonates with me the
25 true impact that a lot of this stuff does have as a citizen,

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1 as an adult, as a father.

2 To sit here and say -- to try to give you an apology
3 and say "I'm sorry" would be a great understatement. You know,
4 a lot of stuff happened over there, and I have to hold myself
5 responsible for any part that I would have played in that, even
6 if it was just sitting behind a computer screen or on a cell
7 phone. And I do. I want to take full responsibility for my
8 part.

9 And I truly do apologize to the people. There is
10 really, you know, at the sake of not sounding redundant, you
11 know, it is something that I have to live with every day, and
12 I do try to sort it out in my mind every day. And if given the
13 opportunity to do it all over again, I wouldn't -- not only
14 would I not do it, I would -- you know, part of my hopes are,
15 upon release, working with some of the youth and helping to
16 deradicalize them and help them to see, you know, the risks
17 involved and the repercussions of their actions.

18 So that's all. Thank you.

19 THE COURT: Thank you.

20 Mr. Hellman, you have the floor back.

21 MR. HELLMAN: Thank you, Judge.

22 So, of course, the government agrees that Mr. Clark
23 did not commit an attack. If he had, he would have been
24 charged with another crime, if the government had the evidence
25 to substantiate it.

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1 He's being sentenced for providing and attempting to
2 provide material support to ISIS, and he did. We don't have to
3 divine the reasons or guess, because he told sources working
4 either at the direction of or for the FBI during the
5 investigation why he was doing it. Media is my Jihad.
6 Mr. Clark understood the immense value of propaganda to an
7 organization like ISIS. ISIS specifically discusses the value
8 of propaganda to its organizational missions.

9 His role was critically important to ISIS. He had an
10 understanding of why that mattered to the group, and that in
11 conducting it, he was -- and through his conduct, he was
12 engaged in a form of Jihad for ISIS, which in his estimation
13 and in his conversations was akin to another area of conduct he
14 actively discussed throughout the course of the investigation,
15 which is conducting an attack. Again, his words, a martyrdom
16 operation.

17 And to be absolutely clear about what that meant, it
18 meant conducting an attack in New York City, which would cause
19 maximum destruction and loss of life and would likely end in
20 his demise because of the nature of the attack. These are the
21 types of attacks that he not only called for, and graphics that
22 he created and that he redistributed in chat rooms on the
23 Internet, but also that he posted guides to conduct, detailed
24 guides, which related to bomb-making in very, very technical
25 terms which would allow people to create bombs, if they read

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1 them, using household items. But also knife attacks, truck
2 attacks, indiscriminate attacks with firearms on dense groups
3 of population. He discussed specifically ways in which attacks
4 could be conducted on the subways in New York Cities, subways
5 that he used, that his family used.

6 I mention all of that because I think it is critically
7 important insight into the defendant's mindset at the time he
8 was posting this material. Although he claimed in his
9 post-arrest and to the doctor who was evaluating him that he
10 passively posted, did not read 70 percent of the materials that
11 he distributed, and that he didn't really think that others
12 would follow through based on his exhortations or the manuals
13 for how to commit attacks that he was disseminating, he was
14 calling for attacks on a place where he and his family lived
15 and worked.

16 His commitment to ISIS was absolute. We don't have to
17 guess at that either. He pledged allegiance to ISIS twice,
18 including within a month -- just a few weeks before his arrest.
19 He recommitted to ISIS the day after he mourned the death of
20 ISIS's previous leader and promised that there would be
21 retribution for that person's death. Retribution specifically
22 against the United States.

23 His pledges of allegiance to ISIS, his discussions of
24 conducting an attack himself, indicate his utter commitment to
25 this organization. His fidelity. He was willing to kill

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1 others. He was willing to risk his family's lives. He was
2 willing to radicalize members of his family. He was willing to
3 die himself in order to advance the goals of the organization.

4 It is a miracle that an attack didn't occur in this
5 case. But it does not withstand scrutiny, I submit, that he
6 was not serious about his calls to action or that he was not
7 serious about inspiring others. I think Mr. Marvinny used a
8 phrase which is very important, that he didn't do anything in
9 the real world. The defendant didn't anything in the real
10 world. The application that he used is the real world.

11 The Internet is the real world. Hundreds and hundreds
12 of ISIS supporters and followers, or even people who are just
13 interested in ISIS, were exposed to content that the defendant
14 collected and disseminated. Was a lot of it already in what is
15 referred to as the public domain? Sure. But the defendant
16 functionally created encrypted clearinghouses where people
17 could freely access these documents and paired them with calls
18 for attacks, which contextualizes both the calls for attacks
19 and contextualizes the manuals themselves in ways that are
20 critical to ISIS's mission.

21 He's pled guilty to that offense. The government is
22 not trying to suggest that he committed another separate
23 offense, but that the offense he did, in fact, commit is
24 serious enough to warrant a guideline sentence. The comparison
25 to Caesar is important. What the government points out and

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1 what I tried to point out in the submission is, yes, Caesar did
2 use online forums. The order of magnitude is totally
3 different.

4 In terms of the postings that Mr. Clark made, in terms
5 of the channels that he either created, maintained, or brought
6 back to life, if they had already been dismantled by law
7 enforcement, they are not even in the same category. Posting
8 information on Facebook or Twitter or Instagram, which is
9 publicly accessible or engaging in one-on-one communications
10 with others using those platforms, is simply not akin to the
11 defendant's conduct in this case.

12 I think that I need to spend a little time addressing
13 the doctor's report, because the point I've been trying to make
14 is that the doctor's report is only as good as the input. I
15 understand that the doctor explains that he reviewed materials
16 and he sets out a lengthy background section to his report.
17 But I submit, again, that Clark did minimize his conduct when
18 he was speaking with the doctor. He explained -- this is a
19 quote -- he was thinking that a lot of stuff was harmless and
20 not follow through on be an attack. He did not read through
21 withdrew 70 percent of what he posted. He intended to generate
22 noise. That is the truth. But my behavior is not OK. I never
23 had a plan to attack anyone. He also said that while he was --
24 when he was pressed on whether his material could incite
25 violence, he replied yes. I could see how people are

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1 impressionistic.

2 You don't just have to look at the statements and ask
3 ourselves, does that square with his conduct? At the time he
4 was posting, he explained to others why he was posting these
5 materials. And his explanation was, This is my Jihad. I'm
6 supporting ISIS. This is to inspire others to commit attacks
7 and give them the means to do so.

8 Later he described his decision-making regarding the
9 posts as poor or the worst, but explains that he had a change
10 of heart and snapped back to reality, meaning prior to his
11 arrest. That is simply false. He was continuing to support
12 and even pledged his life to ISIS within weeks of his arrest.

13 The doctor's conclusions include the sum which the
14 government takes exceptional issue with. For example, the
15 doctor says that he may view, if any, sophisticated attempt to
16 disguise his digital footprints. It's nonsensical. He used
17 encrypted applications. He switched applications constantly.
18 He spoke with many, including CSs and UCs, about how to hide
19 from law enforcement. He never used his real identity. He
20 never used open-source applications, like Gmail or Facebook, as
21 some of the other individuals in other cases cited by the
22 defense did. He used encrypted platforms because he was aware
23 of law enforcement's scrutiny and he hoped to evade it.

24 Later, the doctor writes the defendant's ability to
25 carry out an actual attack was limited as his history is

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1 replete with examples of being incapable of accomplishing basic
2 tasks. That claim is undermined by his actual conduct in the
3 case in administering dozens of chat rooms and distributing
4 these materials and successfully hiding his digital footprint
5 for such a long period of time.

6 It is also valuable, I think, to note that basic
7 skills are all that is necessary to complete many of the
8 attacks the defendant called for. It doesn't take exceptional
9 skill to drive a truck into a crowd of people or to stab
10 individuals at random in a subway platform, while it is perhaps
11 correct that some of the bomb-making materials required a more
12 advanced understanding of material science and bomb making in
13 general. Many of the attacks the defendant sought were attacks
14 that could be committed by everyday individuals with access to
15 household items. It is simply not difficult to conduct a lone
16 wolf attack in many of the ways the defendant suggested.

17 I think, importantly, the doctor says he continues to
18 exhibit a minimal understanding into what led him to seek out
19 and distribute extremist material. I submit that the defendant
20 has never truly reckoned with his conduct here. He has not
21 offered anything approaching an appropriate explanation for his
22 conduct. There is a murky history of radicalization. We don't
23 know exactly when it happened. He hasn't totally explained
24 that, but sometime in the months before the offense conduct
25 began, and then a complete denial several months before he was

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1 arrested, he was no longer interested in this conduct.

2 That's belied by the evidence, but I think it also
3 relates to another point which has been made, which is about
4 the depths of his addiction. It would appear that over decades
5 of addictive behavior and recidivating, which by the way the
6 prior crimes certainly fit into a pattern of drug-seeking
7 behavior; petty larcenies, burglaries, driving under the
8 influence. Even the robberies for petty cash can be lain at
9 the feet of an addiction. This crime, the crime of conviction
10 here today is simply of a different category. But what is
11 notable is that his ability to conduct his behavior in this
12 case appears to have -- appears in the middle of his addiction,
13 which was all consuming, but he was also able to engage in the
14 conduct that happened here.

15 The point that the government has now made too many
16 times is clear. I don't think that the reports are helpful in
17 explaining Mr. Clark's motivations or his continued beliefs or
18 his dangerousness. Because Mr. Clark hasn't fully reckoned
19 with those things himself or adequately explained them. The
20 mini incarcerations are important and are not wrestled with in
21 the government's opinion suitably in the expert's report.

22 The conduct that was committed in this case is
23 extraordinarily serious, and the damage that it did is as yet
24 unknown. We don't know who is radicalized by this, by the
25 materials the defendant created and disseminated, and we don't

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1 know who still possesses the materials that he disseminated,
2 which could enable them to commit an attack today, tomorrow, or
3 in the future.

4 Because the defendant has not adequately come to grips
5 with his conduct, the government submits that incapacitation is
6 appropriate here, which is part of the reason, among others,
7 that it requests a 240-month sentence, comporting with the
8 guidelines and for a period of lifetime supervised release.

9 If there are any questions?

10 THE COURT: No.

11 MR. HELLMAN: Thank you.

12 THE COURT: Mr. Marvinny, anything further?

13 MR. MARVINNY: Your Honor, at the risk of beating a
14 dead horse, I come back to just a fundamental disagreement with
15 Mr. Hellman's reading of Dr. Katsavdakis' report.

16 The aggravating factors are in there. Dr. Katsavdakis
17 goes through them at length. He was under no illusions about
18 what Mr. Clark did.

19 THE COURT: I agree with you.

20 MR. MARVINNY: Lastly, I'll just say, your Honor, the
21 government keeps saying we don't know who is radicalized by
22 Mr. Clark's postings. We don't know what could have happened.
23 We don't know. Sure, that is true. In a broad sense, sure.
24 You can imagine a parade of terribles, and I don't minimize
25 that at all, of course. But he still has to be sentenced for

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1 what he did, not for some abstract idea of what he might have
2 done, or because he did things that are distasteful, that make
3 him look really bad as a person. It is still about his offense
4 conduct and what he actually did. And Dr. Katsavdakis' report
5 is really the best evidence we have looking forward as to what
6 he would have or would have not done.

7 So the government's speculation --

8 THE COURT: Well, actually, the doctor's evaluation is
9 not that he would not go back and commit the crime that he has
10 been charged with and will be sentenced for today. He says,
11 more specifically, that Mr. Clark poses a low threat for
12 further terrorist targeted violence. He himself may never
13 personally commit a violent act, but he is not being sentenced
14 for having committed a violent act. He is being charged and
15 sentenced for providing assistance, which he did. He certainly
16 expressed a willingness to commit a violent act, but he said
17 over and over again, I need some help. I need some material.
18 I need some money.

19 The way I read that is not that he had no intention or
20 no willingness to commit a violent act. He simply didn't have
21 the means, which might be understandable, given that he was
22 spending all of his money on drugs and alcohol, so ...

23 MR. MARVINNY: Fair enough, your Honor. All good
24 points.

25 We are acknowledging that Mr. Clark is being sentenced

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1 for what he did. Of course, the court is right. He posted
2 propaganda, he posted attack-training materials, he posted all
3 sorts of things in the forums, and he should be sentenced for
4 that, and I understand that is what the court is going to do.
5 We haven't asked for anything different.

6 There is simply no doubt, though, that a large chunk
7 of the government's argument relates to its insistence that
8 Mr. Clark was going to commit an attack. What I am saying is
9 simply that Dr. Katsavdakis' findings to the contrary should be
10 afforded more weight than the government's speculation.

11 And when comparing what Mr. Clark actually did to
12 these other material support cases, that is why I'm saying that
13 his conduct falls towards the very bottom of the end of the
14 range of material support cases. In these other cases where
15 defendants received the sentences we cited in our papers, they
16 attempted to travel abroad or they attempted to help people
17 travel abroad. So their conduct in furthering ISIS's agenda is
18 at least as serious as Mr. Clark's, but we think they are
19 relevant comparators because they show that, even for
20 defendants convicted of what Mr. Clark did, a sentence far
21 below the guidelines range is appropriate, as numerous other
22 courts is found.

23 We ask that he be compared to those defendants and
24 receive a sentence somewhere in that range, not that he get a
25 slap on the wrist or commended for not committing an attack.

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1 Just that he be sentenced for what he actually did, and that
2 it will be proportional to what other defendants who have done
3 other things and even worse things have received.

4 THE COURT: OK. The fundamental predicates upon which
5 to determine the appropriate sentence in this case are not in
6 dispute. While the parties evaluate the significance of the
7 defendant's conduct differently, the acts and actions of the
8 defendant are not disputed. Indeed, they could not be, as they
9 were memorialized on the Internet chat forums and channels that
10 Mr. Clark utilized and created.

11 Also, there is no objection to the PSR, other than its
12 sentencing recommendation of 240 months. Nor is there any
13 dispute that the guidelines to be applied in the case are
14 240 months, which is the statutory maximum. Absent the
15 statutory maximum, the guidelines are higher.

16 The government in its sentencing memorandum, and again
17 today, has described in considerable detail the actions of the
18 defendant which led to his indictment for providing and
19 attempting to provide material support and resources to a
20 designated foreign terrorist organization; in this case ISIS.
21 I have no intention of repeating the government's summary and
22 the defendant's conduct, but I do wish to highlight a few
23 aspects of Mr. Clark's conduct.

24 Mr. Clark utilized and ran numerous Internet channels,
25 some encrypted, to disseminate propaganda and ISIS-related

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1 material, including detailed bomb-making and attack-training
2 materials. These materials were the real deal. Mr. Clark
3 twice pledged allegiance to ISIS. Mr. Clark promoted lone wolf
4 attacks and had a wolf tattoo and LW tattooed on his hand. The
5 defendant's activities commenced in March of 2019 and continued
6 through his arrest in November 2019. And Mr. Clark expressed a
7 willingness to die for the cause.

8 Defendant's counsel has advanced several arguments as
9 to why, in their view, Mr. Clark should receive a sentence
10 substantially below the guidelines range. Let me respond and
11 discuss each of them.

12 Defendant's first argument is that Mr. Clark did not
13 personally engage in an act of violence and specifically that
14 he didn't travel abroad. I assume that at least part of the
15 reason for this argument is to try to persuade me that
16 Mr. Clark was not really serious. Indisputably, Mr. Clark
17 stressed a willingness and eagerness to engage in violent and
18 destructive acts in his home City of New York, stirring an
19 interest in committing violence overseas in favor of homegrown
20 lone-wolf attacks.

21 Finally, in this regard, I fail to see why this focus
22 on his own country and fellow citizens should provide any
23 comfort or reason to depart.

24 Mr. Clark was 40 years old when he was actively
25 engaged in these activities. He was open with his family about

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1 his views. There is no reason not to take his stated
2 intentions seriously. He repeatedly asked for resources to
3 help him, to enable him to act.

4 Second, the defense attempts to explain Mr. Clark's
5 conduct by focusing on his traumatic childhood, substance
6 abuse, and mental illness. Regardless of those aspects of
7 Mr. Clark's background, by the time you reach the age of 40
8 and engage in sustained unlawful conduct, you must take
9 responsibility. It is also noteworthy that Mr. Clark did
10 receive, over decades, various types of counseling, even from
11 a fairly early age. Unfortunately, Mr. Clark did not take
12 advantage of the help he was offered. For example, as
13 defendant's submission acknowledges, and I quote, "almost
14 immediately after his probation supervision ended in 2013, he
15 relapsed into heavy drug use." Thereafter, there was no
16 sustained period of sobriety.

17 Third, a threat assessment expert opined that
18 Mr. Clark poses a "low risk for terrorist targeted violence."
19 While I am not sure exactly what this very circumscribed
20 comment covers, that same psychologist also opined, and I
21 quote, "Mr. Clark's management in the community at the time of
22 release will be a significantly difficult and long-term
23 endeavor. He will unlikely be able to care for himself and
24 will require, in this examiner's opinion, long-term
25 rehabilitation, housing, and probation supervision."

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1 The same doctor explained, "While the defendant
2 reported remorse for his behaviors/decisions, he continues to
3 exhibit a minimal understanding into what led him to seek out
4 and distribute extremist materials." So Mr. Clark is somewhat
5 parallel to a defendant who joins a gang for a sense of
6 belonging and family. That defendant is not excused for the
7 crime he commits as a gang member.

8 Fourth, there is the assertion that Mr. Clark is
9 remorseful and no longer radicalized. I took Mr. Clark's plea,
10 and I have read his letter in connection with his sentencing.
11 At his plea, he said just the following in response to the
12 question, Tell me in your own words what you did or some
13 version of that. He said, "I would say probably around 2019 or
14 so, I knowingly did provide, create" -- note the word 'create'
15 which means that there was original material -- "distribute
16 propaganda on social media for an organization at the time
17 I knew had prior engagement to terrorism. A majority of the
18 stuff took place while I was in the Bronx and my conduct was
19 wrong and illegal. So I take accountability for that
20 ownership. I do apologize to the people." That about sums it
21 up.

22 Frankly, what comes across to me is not an
23 appreciation of how seriously wrong it is to want to assist a
24 foreign terrorist organization to attack your own countrymen,
25 but rather regret that he was caught and regret that he is

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1 facing a long stretch in jail.

2 All right. So let's turn to the 3553(a) factors.
3 First, the seriousness of the offense.

4 I don't think it can be disputed that this is a
5 serious offense, especially since Mr. Clark's preferred target
6 was local and directed to American citizens. Recruitment and
7 the spread of information, indeed, repetition is terribly
8 important. That is how the big lie spreads, by repetition.
9 And lone-wolf attacks are indisputably supportive of ISIS. As
10 I noted earlier, Mr. Clark pled guilty to creating conduct.

11 Then there is the next. There is the issue of
12 deterrence. Here, prior contact with the criminal justice
13 system did not work as a deterrent, nor have interventions
14 addressed to his mental health or his addiction issues been
15 effective. Even three near-death overdoses did not serve to
16 shock Mr. Clark into sobriety or treatment. Remember that he
17 has received previously a number of crimes, including having
18 received a six-year sentence. So as a predicative matter, I
19 have no confidence that Mr. Clark can become a productive and
20 law-abiding member of society. That does not mean that he
21 can't, but based on his history, I am not optimistic. I hope I
22 am wrong. Accordingly, because of that, I must take seriously
23 my job to protect the public from further crimes by Mr. Clark.

24 Finally, and of enormous importance here is that the
25 sentence of Mr. Clark, even were it not necessary to deter him,

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1 would be justifiable for the reasons of general deterrence.
2 The message must be loud and clear. Provide or attempt to
3 provide material support and resources to a foreign terrorist
4 organization and you will spend a very long time in jail.

5 In short, I am not persuaded that there is a good
6 reason, a supportable reason, to depart from the guidelines.
7 Accordingly, Mr. Clark is sentenced to 240 months.

8 I place him on supervision for life. Obviously, if he
9 behaves and shows signs of really addressing his issues and
10 supports the notion that he will not return to a life of crime,
11 whether it is this crime or some other crime, that can, you
12 know, be reduced later.

13 There is a special assessment of \$100.

14 And all of the mandatory standard and special
15 conditions set out at pages 33 to 36 of the presentence report
16 are imposed.

17 Let me advise Mr. Clark that if he has not waived his
18 right to appeal, that he has 14 days to file a notice of
19 appeal.

20 Is there anything further at this time?

21 MR. HELLMAN: The government moves to dismiss
22 Count Two.

23 THE COURT: Motion is granted.

24 MR. MARVINNY: Your Honor, I am asking you to consider
25 recommending that the Bureau of Prisons house Mr. Clark as

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1 close to the New York City area as possible.

2 THE COURT: I think that the decision as to his
3 housing probably relates more to his crime than his geography,
4 but if consistent with the crime, there is a location close to
5 New York, I have no problem recommending that.

6 OK. All right. I think we're done. Thank you.

7 * * *